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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION**

WILLIE JEROME HENRY,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)
)
Criminal Case No. 4:93cr70035-1
)
MEMORANDUM OPINION
)
By: Hon. Jackson L. Kiser
Senior United States District Judge

Willie Jerome Henry, a federal inmate proceeding pro se, has submitted a “petition for writ of review to sue out extrinsic fraud and fraud upon the court ab initio.” However, inasmuch as he appears to be challenging the validity of his 1994 drug conviction, I construe his petition as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. See Calderon v. Thompson, 523 U.S. 538, 554 (1998) (ruling the subject matter of the motion and not petitioner’s description determines its status).

I note that court records indicate that Henry has previously filed a § 2255 motion, Civil Action No. 7:99cv00627, regarding the same conviction and sentence.¹ Thus, Henry's instant § 2255 motion is a successive § 2255 motion. I may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Henry has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, I must dismiss his successive § 2255 motion.²

¹ Additionally, Henry subsequently filed at least four successive § 2255 motions in this case, as well as an appeal of orders dismissing his Fed. R. Civ. P. 60(b) motion for lack of jurisdiction and denying his Fed. R. Civ. P. 59(e) motion to reconsider, which the United States Court of Appeals for the Fourth Circuit dismissed, on July 6, 2005, as a successive 28 U.S.C. § 2255 motion.

² Henry is once again hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. He must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that

The Clerk is directed to send certified copies of this order and the accompanying memorandum opinion to Henry.

ENTER: This 5th day of January, 2009.



Jackson L. Kuhl
Senior United States District Judge

the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.